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CHARLES ELMOR

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 26.

THE FARMERS LOAN & TRUST COMPANY, AS SOLE SURVIVING EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY R. TAYLOR, DECEASED, *Appellant,*

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLEE.

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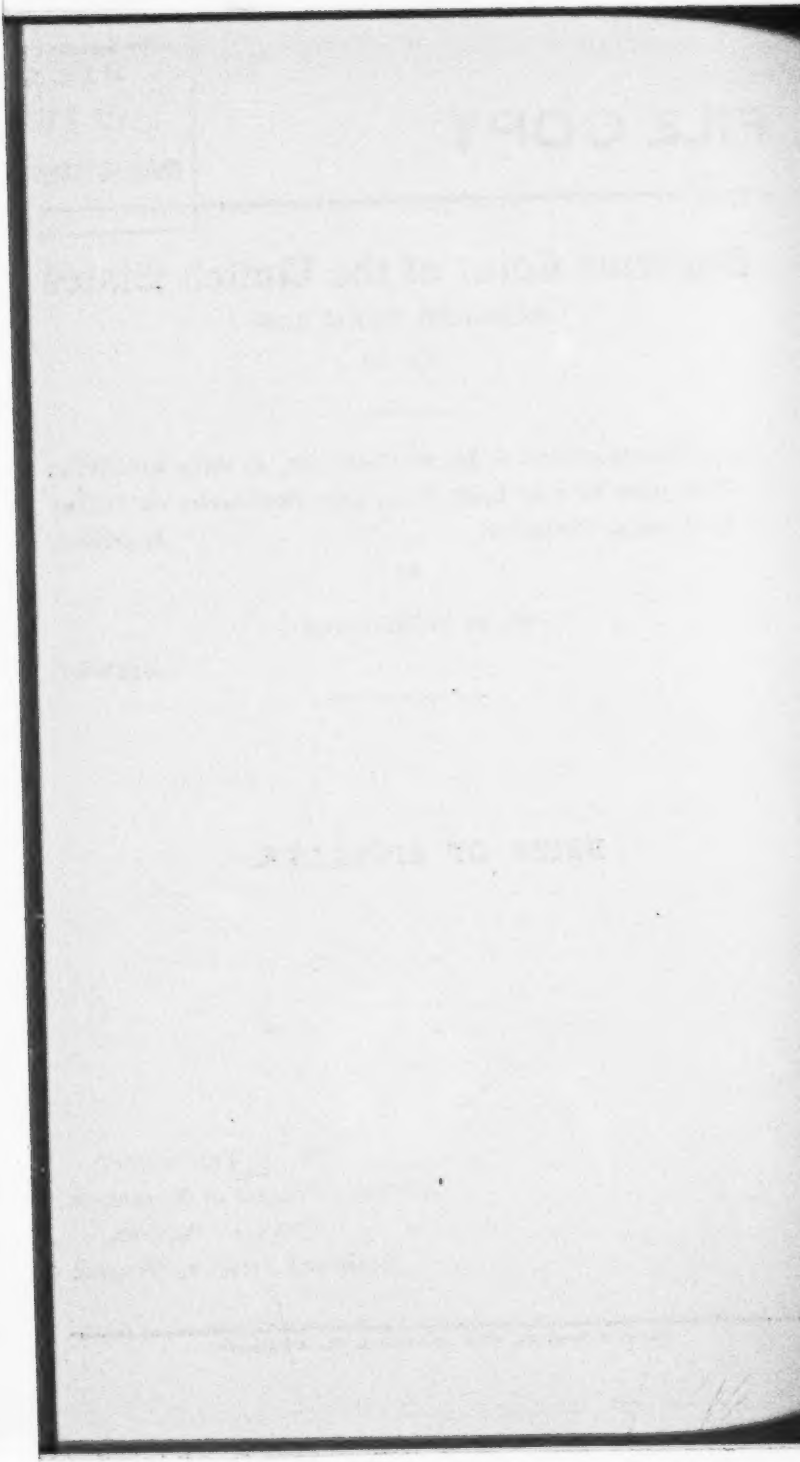

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vs.

STATE OF MINNESOTA,

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BRIEF OF APPELLEE.

STATEMENT OF THE CASE.

This appeal involves the right of Minnesota to impose an inheritance tax on the transfer of bonds and certificates of indebtedness issued by the state and two of its municipalities, owned by a resident of New York and the written evidences of the debts kept in that state. Although it is the rule in Minnesota that the state may tax the transfer of debts owed by resident debtors to non-resident creditors, the Supreme Court of the state first held that the bonds here in question were tangibles and in effect that the debt had no existence apart from the written instruments evidencing the debts (*State vs. Taylor,* 175 Minn. 310; R. 50-53).

Upon petition for reargument filed after the decision in *Blodgett vs. Silberman,* 277 U. S. 1, the state court, follow-

ing the rule laid down in that case, declared the bonds to be intangible and, applying the rule noted above, held the tax a valid one (*State vs. Taylor, supra,* p. 314; R. 55-56).

The judgment appealed from appears as *"In the Matter of the Inheritance Tax on the Estate of Henry R. Taylor, Deceased,"* 176 Minn. 634. The stipulated facts are sufficiently stated in appellant's brief.

The sole question presented by this appeal is this:

Does the due process clause of the Fourteenth Amendment to the Constitution of the United States prevent the State of Minnesota from levying an inheritance tax upon the transfer of debts owed by the state and its municipalities to a non-resident and evidenced by bonds kept at his domicil?

SUMMARY OF ARGUMENT.

1. The language of the Minnesota statute imposing an inheritance tax, as construed by its Supreme Court, is sufficiently comprehensive to include a tax on the transfer of the bonds involved in the case at bar.

2. The tax here imposed is not upon property but upon the right or privilege of transfer granted by the state.

3. Minnesota has jurisdiction to tax the transfer of credits owed by a person or corporation domiciled therein or otherwise within its control, irrespective of the creditor's domicil.

4. *Blackstone vs. Miller* considered in conjunction with *Blodgett vs. Silberman* is decisive of the case at bar in favor of appellee.

5. Double taxation is not violative of the due process clause of the fourteenth amendment to the United States constitution.

6. The debts evidenced by the bonds in the case at bar can be enforced only through the laws of Minnesota—hence Minnesota has power to tax their transfer.

7. The question of taxable situs is not affected by registration and place of payment of bonds.

8. None of the cases cited by appellant involve the right of the state of the debtor's domicil to impose an inheritance tax on the transfer of state and municipal bonds. Therefore they do not support appellant's position in this case.

9. Decisions of courts in other states support the principle that the state of the debtor's domicil can tax the transfer of debts protected by it.

10. Theoretical discussion of technical situs should not be permitted to obscure the principle that power over the debtor confers power to tax the transfer of the debt. Court should exercise caution in applying the fourteenth amendment so as to cut down the taxing power of the states.

ARGUMENT.

I.

The State Statute Imposing the Tax Includes the Transfer of These Bonds.

General Statutes of Minnesota 1923, §2292, provides:

> "A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, * * * to any person, association or corporation, * * * in the following cases:
>
> * * * * * * * * * *
>
> (2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and

the decedent was a non-resident of the state at the time of his death."

"The legislature intended to, and did, impose a tax upon the right of succession to the personal property of non-resident decedents, in all cases in which such property is within this state, or subject to the laws of this state."

State ex rel. Graff vs. Probate Court, 128 Minn. 371, 379.

II.

The Tax Is Not Upon Property But Upon the Right or Privilege of Transfer Granted by the State.

"The tax in question is not a tax upon property but a tax upon the right of succession thereto."

State ex rel. Graff vs. Probate Court, supra, p. 381.

"The tax is not upon property, but upon the privilege of succession, which the state may grant or withhold.

"* * * it is settled * * * that the state of the debtor's domicil may impose a succession tax. (*Blackstone vs. Miller,* 188 U. S. 189, 205; *Baker vs. Baker, Eccles & Company,* 242 U. S. 394, 401.)"

Maxwell vs. Bugbee, 250 U. S. 525, 541, 543.

See *Knowlton vs. Moore,* 178 U. S. 41, 47.

United States vs. Perkins, 163 U. S. 625, 628.

Mager vs. Grima, 8 How. 490, 493.

The Minnesota rule is in accord with the rules laid down by this court: That the right to transmit or take property by devise or descent is a creature of the law and not a natural right; that an inheritance tax is a limitation or condition upon the right to transmit or take; and that an in-

heritance tax is not a tax on the property transferred at death, but one predicated upon the passing of property as the result of death, as distinguished from a tax on property dissociated from such transfer.

Mager vs. Grima, 8 How. 490, 493.
United States vs. Perkins, 163 U. S. 625, 628, 629-630.
Magoun vs. Illinois Trust and Savings Bank, 170 U. S. 283, 288.
Knowlton vs. Moore, 178 U. S. 41, 47, 54-56.
Plummer vs. Coler, 178 U. S. 115.
Orr vs. Gilman, 183 U. S. 278, 289.
Bullen vs. Wisconsin, 240 U. S. 625.

In the case of a debt, however evidenced, its quality as property, after the death of the creditor and before the payment of the tax upon its transfer, is in suspension; for

> "It is not until it has yielded its contribution to the state that it becomes the property of the legatee."
> *United States vs. Perkins, supra*, p. 628.

III.

Minnesota Has Jurisdiction to Tax the Transfer of Credits Owed by Persons or Corporations Domiciled Within Its Borders, or Otherwise Within Its Control, Regardless of the Domicil of the Creditor.

This statement is supported by three propositions:

(1) The law of the domicil of the decedent has no extra-territorial force; the right of transfer thereunder is given effect only by the express or tacit consent of the state of the situs of the property; and the recognition of the law of the domicil is limited by the policy of the local law.

This proposition is stated by Story in his Conflict of

Laws, quoted in *Catlin vs. Hull,* 21 Vt. 152, 160, as follows:

> "The laws of every state affect and bind directly all property whether real or personal within its territory, * * * and all contracts made and acts done within it. A state may therefore regulate the manner and circumstances, under which property, whether real, or personal, or in action, within it shall be held, transmitted, bequeathed, transferred, or enforced."

In *Blackstone vs. Miller,* 188 U. S. 189, the court said that it is plain that the transfer by inheritance is subject to the power of the state of the debtor's domicil, and that the state may subject the transfer to a tax, because the transfer depends upon the law of that state. It also said (p. 204):

> "To a considerable, although more or less varying, extent the succession determined by the law of the domicil is recognized in other jurisdictions. But it hardly needs illustration to show that the recognition is limited by the policy of the local law."
>
> See also *Baker vs. Baker, Eccles & Co.,* 242 U. S. 394, 400.

While tangible personal property was the subject of the court's discussion in *Frick vs. Pennsylvania,* 268 U. S. 473, 491, its language may, by reason of the cases cited in support of it, be applied to intangibles:

> "Other decisions show that the power to regulate the transmission, administration, and distribution of tangible personal property on the death of the owner rests with the state of its situs, and that the laws of other states have no bearing save as that state expressly or tacitly adopts them; their bearing then being attributable to such adoption and not to any force of their own."

(2) A debt constitutes assets where the debtor lives, regardless of the residence of the creditor and the whereabouts of the written evidence of the debt, and has locality in the domicil of the debtor for the purpose of founding administration and for the purpose of attachment and garnishment.

As said in the case of *Wyman vs. Halstead*, 109 U. S. 654, 656:

> "The general rule of law is well settled that for the purpose of founding administration, all simple contract debts are assets at the domicil of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable."
>
> "Indebtedness due from a resident to a non-resident —of which bank deposits are an example—is property within the state."
>
> *Pennington vs. Fourth National Bank*, 243 U. S. 269, 271.

In *Chicago, etc., Ry. Co. vs. Sturm*, 174 U. S. 710, 716, the court, in holding that a debt may be attached at the domicil of the debtor although the creditor's domicil is in another state, said that, in order to reach and arrest payment of what is due and might be paid to a non-resident to the defeat of his creditors,

> "He must go to the domicil of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of situs are somewhat artificial. If not artificial, whatever of

substance there is must be with the debtor. He, and he only, has something in his hands. That something is the *res*, and gives character to the action, as one in the nature of a proceeding *in rem*."

(3) The law of the debtor's domicil protects the debt, has power over the person of the debtor, compels the payment of the debt, and gives it validity.

As said in *Blackstone vs. Miller, supra;* pp. 205, 206:

"What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * * So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. * * *

Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

See also *Liverpool, etc., Insurance Co. vs. Board of Assessors for the Parish of Orleans,* 221 U. S. 346, 354.

And, in the case of *Maxwell vs. Bugbee,* 250 U. S. 525, 543, the court definitely and comprehensively said:

"It is settled that, * * * the state of the debtor's

domicil may impose a succession tax. (*Blackstone vs. Miller,* 188 U. S. 189, 205; *Baker vs. Baker, Eccles & Co.,* 242 U. S. 394, 401.)"

The foregoing propositions find further support in *Baker vs. Baker, Eccles & Co., supra.* There the state of the decedent's domicil adjudged that his widow succeeded to a debt owing by and shares of stock in a Kentucky corporation. The court held the judgment invalid as against a Kentucky claimant not a party to the original proceeding. It is true that the decision was based on the proposition that the Kentucky claimant was not a party to the proceeding in Tennessee; but, since probate proceedings are *in rem,* it must necessarily be true that the probate proceeding in the Tennessee court would have vested title in the widow had the debt had its situs in Tennessee and nowhere else.

Appellant relies upon language used in the case of *Rhode Island Trust Co. vs. Doughton,* 270 U. S. 69, 80-81, to the effect that the principle that the subject to be taxed must be within the jurisdiction of the state applies as well in the case of a transfer tax as in that of a property tax, and that a state has no power to tax the devolution of the property devolved or transferred. The court was speaking of the *subject* taxed. ~~There the subject of the tax was property—the debt; here it is the transfer of it.~~ It is settled by numerous decisions of this court and by decisions of the state court that the subject of a transfer tax is the right or privilege which may be granted or may be withheld by the state which protects the debt and under whose laws it may be transferred, enforced or impounded. No involuntary act concerning the debt can be compelled except by recourse to the laws of the debtor's domicil. Having thus governmental dominion over the debt for every purpose, it may impose a condition

upon its transfer by inheritance; and that is the subject of the tax here involved.

Further discussion of the Doughton case is not required. There North Carolina undertook to impose an inheritance tax upon shares of stock owned by a non-resident in a New Jersey corporation. The subject of the tax was the transfer of these shares, which had no situs for any purpose in the state levying the tax, because the property of the corporation is not property of the shareholder. There is no similarity between the relation of a stockholder to the property of the corporation and the relation of a creditor to a debt owed directly to him.

IV.

The Cases of Blackstone vs. Miller and Blodgett vs. Silberman Are Decisive of the Case at Bar.

If the foregoing discussion have value, it is only as an exposition of fundamental principles, for the controversy presented in the case at bar is settled by a correlation of the rules laid down in two decisions: *Blackstone vs. Miller* and *Blodgett vs. Silberman*. In the first it was held that the transfer of a bank deposit and a simple debt was taxable by the state of the debtor's domicil because they were intangible property, choses in action. In the second it was held that debts evidenced by public bonds are intangible property, choses in action. In combination they hold that the transfer of debts evidenced by public bonds is taxable at the debtor's domicil.

Since these cases are controlling, they merit further discussion.

In the Blackstone case a testator domiciled in Illinois

transferred by will a debt owed by a New York resident and a deposit in a New York trust company. Illinois taxed the transfer. New York also taxed it under a statute similar to that of Minnesota. The New York tax was attacked on the ground, among others, that it violated the Fourteenth Amendment. After pointing out that the succession determined by the law of the decedent's domicil was generally recognized in other jurisdictions, the court said:

> "But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. * * * What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. * * *
>
> "Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way" (pp. 205-206).

And further:

> "The universal succession is taxed in one state, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money" (p. 207).

And again:

"It [the tax] does not violate the 14th Amendment" (p. 207).

The appellant seeks to make something of the fact that the court speaks principally of the bank deposit rather than of the debt of $10,692.24 owed by a New York firm. It would appear that, while the decedent's representative claimed that New York had jurisdiction of the transfer of neither, his principal contention was that the deposit at least should be treated as tangible property by reason of its asserted similarity to coin in the pocket. But the basis of the decision makes it clear that it has full application to the debt as well as to the deposit.

The decision in the Blackstone case is bottomed on the propositions that the state of the debtor's domicil has jurisdiction to control the transfer and to compel the payment of the debt, and those propositions are equally applicable to the bonds here taxed, for the transfer can not be made, nor can payment be compelled, save under the law of Minnesota.

The court did say that a debt evidenced by a bond or negotiable instrument is inseparable from the paper which declares and constitutes it. Here the court was discussing the case of *State Tax on Foreign-Held Bonds*, 15 Wall. 300. That case involved a property tax and not a transfer tax; but the important consideration is that in the Blackstone case the court was in no way concerned with the situs of debts evidenced by bonds and negotiable instruments and had no occasion to decide that question. It never has held that the transfer of debts evidenced by bonds or by negotiable instruments may not be taxed by the state of the debtor's domicil. Furthermore, the decision in the Blodgett case has completely wiped out whatever significance the dicta

in this and other cases may have had.

In the Blodgett case the court had under consideration the power of Connecticut, the state of the decedent's domicil, to tax bonds and treasury certificates of the United States owned by the decedent and kept in New York, a savings account in that state, and certain other property. Relying upon the language used in the Foreign-Held Bonds case and other cases, the decedent's representative contended that the bonds were tangible in character, and that under the rule laid down in the case of *Frick vs. Pennsylvania*, 268 U. S. 473, they could be taxed only where the evidences thereof are kept.

The court opens the discussion by defining exactly the holding in the Foreign-Held Bonds case,—

> "that the law of Pennsylvania in requiring the railroad company, which issued the bonds, to pay the state tax on them and deduct it from the interest due the non-resident owners, was as to them a law impairing the obligation of contracts under *Murray vs. Charleston*, 96 U. S. 432" (p. 14).

It may be added that the bonds in question were secured by a mortgage on property in Pennsylvania and in other states. Since the creditors could therefore have enforced payment of the debt without going into Pennsylvania for that purpose, the case would have no bearing on the question now presented to the court even if it had been decided on grounds other than that last stated.

The court then states the question and gives its answer:

> "The question here is whether bonds, unlike other choses in action, may have a situs different from the owner's domicil such as will render their transfer taxable in the state of that situs *and in only that state*.

We think bonds are not thus distinguishable from other choses in action. It is not enough to show that the written or printed evidence of ownership may, by the law of the state in which they are physically present, be permitted to be taken in execution or dealt with as reaching that of which they are evidence, even without the presence of the owner. While bonds often are so treated, they are nevertheless in their essence only evidences of debt. The Supreme Court of Errors expressly admits that they are choses in action. Whatever incidental qualities may be added by usage of business or by statutory provision, this characteristic remains and shows itself by the fact that their destruction physically will not destroy the debt which they represent. *They are representative and not the thing itself*" (Italics ours) (pp. 14, 15).

It repeats that bonds are representative only and are not the thing represented and that "they are at most choses in action and intangibles" (p. 17).

The securities there involved were bonds and treasury certificates of the United States. If any bonds constitute tangible property, these must, for they more nearly approach the character of currency and coinage than do any other. Bonds of states and of municipalities are less certain of payment and, consequently, less constant in value. The history of this country and the decisions of this court present instances of default. These have left their impression; and, whatever may be said of skilled investors, it is nevertheless true that the general public exercise far greater caution in the purchase of bonds of municipalities and states than in the purchase of bonds of the United States.

The decision erases completely all earlier suggestions that

debts represented by bonds are tangible in character, are not choses in action, and are subject only to the jurisdiction of the state in which the paper is found. It would seem that there can be no distinction between one debt and another, or one chose in action and another, in respect of jurisdiction for the purpose of taxing the transfer. In each case the state of the debtor's domicil gives the same protection to the debtor, affords the same means of compelling payment, exerts the same control over transfer by succession. If in the Blackstone case these furnished grounds for taxing the transfer of choses in action consisting of a bank deposit and a simple debt, so must they also furnish the ground for taxing the transfer of choses in action consisting of debts owed by a state and its municipalities, whether they be evidenced by paper writings or not.

The court said that the principle of the maxim *mobilia sequuntur personam* "is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction." That inquiry was not involved even collaterally, for New York had not undertaken to tax the bonds, nor could it have done so except on the theory that they constitute tangible property. As intangibles they had no situs apart from the domicil of the owner; for the debtor, the United States, has no locality, is ubiquitous throughout the Union, and within its proper sphere is subject to the control of no state.

Wyman vs. Halstead, supra.

V.

One Tax Is Not Invalidated by the Imposition of Another Upon the Same Transfer.

Appellant suggests that all property, whether tangible or intangible, should have a single situs for purposes of taxation. But there is no constitutional objection to taxing in two separate jurisdictions a single property or privilege.

> "The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe vs. Errol,* 116 U. S. 517, 524; *Knowlton vs. Moore,* 178 U. S. 53."
>
> *Blackstone vs. Miller, supra,* p. 207.

But if intangibles were to have a single situs for the purpose of a property tax or of a transfer tax, or only one additional to that at the domicil of the owner, that situs should be the domicil of the debtor for the reasons stated by a writer in 31 *Harvard Law Review* 930, 931:

> "* * * the sovereign of the debtor's domicil has control over the obligation by having jurisdiction over the debtor, and protects it and the debtor and makes the debt valuable to the creditor. It protects the foreign creditor as respects the debt in the same way it does the foreign owner of tangible property within its jurisdiction. And in like manner such state and such state alone should be the one to levy the tax."

Many states have, by the enactment of reciprocal exemption laws, chosen to relinquish conditionally the power to tax local intangibles of non-residents. Progress in that

direction is rapid. About two-thirds of the states of the Union grant such exemption in one form or another. Minnesota has not yet joined their ranks and still avails itself of its right to tax the transfer of such intangibles. Perhaps hardships sometimes result; but whether the practice shall be changed is for the determination of the legislature and not of the courts.

VI.

Payment of the Bonds Is Provided for and Can Be Enforced Only Through the Laws of Minnesota.

Some of the debts are evidenced by bonds, and some by certificates of indebtedness issued by the state. The others are bonds issued by the cities of St. Paul and Minneapolis.

Bonds of the state and its municipalities are peculiarly local in character. It is not enough that payment can be enforced only through the agencies of the state, but even voluntary payment can be made only as is authorized by its statutes and municipal ordinances. It is not necessary to refer to the statutes and ordinances under which the public officers levy taxes for the payment of principal and interest and disburse the funds.

In the event of default in the payment of principal or interest on the city bonds, the owner must obtain judgment against the city in the local courts. If the officers then refuse to levy the taxes necessary for the payment of the judgment as required by General Statutes 1923, §§ 1834 and 1836, proceedings must necessarily be instituted against them in Minnesota to compel the performance of that duty.

In the event funds were lacking for the payment of principal or interest on the registered rural credit bonds of the state, those funds can be provided only by the issuance of

certificates of indebtedness by the rural credit board, followed by its issuance of a tax levy certificate and the levying of a tax by the state auditor for their payment. General Statutes 1923, §6041. Performance of these acts can be compelled only by proceedings in Minnesota.

In the event funds were lacking for the payment of the certificates of indebtedness issued by the Minnesota Soldiers' Bonus Board, they can be supplied only through the tax levy required to be made by the state auditor. Laws of Minnesota, Extra Session 1919, ch. 49, §12; *Gustafson vs. Rhinow*, 144 Minn. 415. Here again the levy of the tax can be compelled only by proceedings in Minnesota.

In every instance it is Minnesota law that furnishes the means of payment and compulsion to provide it.

VII.

Registration and Place of Payment Immaterial on Question of Situs.

Some bonds were payable in New York, some in New York or Minnesota at the option of the payee, and some in New York or Minnesota without mention of option. This designation is made merely for the convenience of the holder. It affects neither the vitality of the debt nor its enforcement and hence has no bearing on its situs. Payment could not be enforced under the laws of New York. The debtors could not be sued there, nor could the courts of New York enforce the statutes of Minnesota requiring officers to take the necessary steps to provide revenue for the payment of the bonds.

The designation of the place of payment does not affect the character or the locality of the debt.

Wyman vs. Halstead, 109 U. S. 654, 658.

Nor is it important that some of the bonds were registered and some were not, for the tax is not imposed upon the bonds or the debt as property, nor upon its transfer *inter vivos*, but upon its transfer by will. ~~or descent~~.

It may be noted, however, that Massachusetts has held that in the case of registered bonds the state law must be resorted to for effectuation of the transfer (*Bliss vs. Bliss*, 221 Mass. 201). It should also be said that whatever transfer the owner may make, registration must ultimately take place, for only the registered owner is entitled to collect principal and interest, and the registration is an act which occurs in Minnesota and can be compelled only by the courts in Minnesota. The difference in remedy between registered and unregistered bonds is one of degree only.

VIII.

Cases Cited by Appellant Easily Distinguishable From Case at Bar.

Buck vs. Beach, 206 U. S. 392, does not support appellant's position. In that case the state of Indiana claimed the right to tax as property promissory notes owned by a non-resident, made by residents of Ohio, payable there, and having no business situs in Indiana. The sole question presented to this court was whether the mere presence of the notes in Indiana constituted the debts, of which the notes were the written evidence, property within the jurisdiction of that state, so that such debts could be therein taxed. In other words, were the notes tangible property? This court held that they were not and that Indiana had no right to tax them simply because of their presence in that state.

The opinion points out that if it should become necessary

to enforce payment of them the owner could not resort to the courts of Indiana. Hence, Indiana furnished no protection to him.

The dicta on page 407, that public securities have sometimes been treated as property in the place where they were found though removed from the domicil of the owner, has been deprived of any force by the decision in *Blodgett vs. Silberman.*

Wheeler vs. Sohmer, 233 U. S. 434, involved the power of New York to levy an inheritance tax on promissory notes owned by a non-resident and kept by him in a safety deposit box in New York. This court held that the notes had a taxable situs in New York.

Neither of these cases involve the power of the state of the debtor's domicil to levy an inheritance tax on the transfer by the death of a non-resident of municipal and state bonds owned and kept by him in the state of his domicil. This question was not discussed in either case. The only reason for appellant's citation of these cases is that this court made use of certain dicta to the effect that bonds and public securities constitute a species of tangible property. As this court has now held unequivocally that such securities are intangible, the force of this dicta has been entirely dispelled.

The same is true of the cases of *Walker vs. People,* 64 Colo. 143; *McLaughlin vs. Cluff,* 66 Utah 245; *Commonwealth vs. Huntington,* 148 Va. 97.

In addition to the fact that in all of these cases the bonds which it was sought to tax were bonds of a domestic corporation secured by mortgages on real estate situated in foreign jurisdictions and hence the creditor did not need to resort to his remedy in the taxing state, the decisions of those courts all conflict with the decision of this court that such obligations are intangible. Also, it might be pointed

out that these cases involve questions of statutory construction, which are not federal questions. As an instance of the latter point, in *McLaughlin vs. Cluff, supra,* the real point at issue was whether a provision of the constitution of Utah providing that "mortgages upon real and personal property shall be exempt from taxation" applied to an inheritance tax.

Concerning the New York cases holding that New York is without power to tax bonds of a domestic corporation owned by a non-resident and kept by him in the place of his residence, because of the tangible character of these bonds, it is only necessary to call this court's attention to the fact that New York relies as authority to support this position on *State Tax on Foreign-Held Bonds, supra.* The Blodgett case destroys that authority.

IX.

Other States Support Appellee's Position.

In *Chaffin vs. Johnson,* 200 Ia. 89, it was held that Iowa had jurisdiction to levy an inheritance tax on promissory notes owned by a non-resident, executed by residents of the state of Iowa, and secured by real estate in that jurisdiction. There the court, following *Blackstone vs. Miller,* decided that as Iowa protected the creditor in the enforcement of his obligation it had the right to tax the transfer of the debt.

The same principle is applied by the Supreme Court of the state of Michigan in *In re Rogers Estate,* 149 Mich. 305.

CONCLUSION.

The state of the domicil protects the debt, compels its payment, and permits its transfer. Every canon of logic and of justice supports the policy of that state to exact tribute from testator or beneficiary upon the transfer as a single succession. The principle should not be obscured by theoretical discussions of technical situs. To paraphrase the language in *Louisville, etc., Ry. Co. vs. Barber Asphalt Paving Co.*, 197 U. S. 430, 434, and *Wheeler vs. Sohmer, supra*, p. 439, it is important that the court "avoid extracting from the very general language of the Fourteenth Amendment a system of delusive exactness in order to destroy methods of taxation," and that it exercise "caution in cutting down the power of the states" on the strength of that amendment.

It is respectfully submitted that the judgment of the state court should be affirmed.

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